Special Appeal (Civil) No.32/2000
Smt. Kaushal Lata & Ors. Vs. Satnam Singh & Ors..
(In S.B.CMA No.338/92)

Date of Order ::: 29/08//05

Hon'ble Mr. Justice V.K.Bali
Hon'ble Mr. Justice Ajay Rastogi

Mr. Sandeep Mathur, for appellants (claimants),

By the Court : (Ajay Rastogi, J.)

It is claimants' special appeal for enhancement of compensation awarded by Motor Accident Claims Tribunal, Jaipur ("***Tribunal***") vide Award dt.19/02/92 in MACT Case No.12/87, and affirmed by learned Single Judge in CMA No.338/92 vide judgment dt.30/03/2000. The Tribunal awarded compensation of Rs.98,250/- with interest @ 12% p.a., from 30/12/86 till actual payment whereof, and in view of finding recorded of contributory negligence, claimants were held entitled for Rs.1,13,250/- viz. 75% of total compensation calculated of Rs.1,51,000/- (Rs.1,44,000 + Rs.5,000/- + Rs.2,000/-).

It is not in dispute that Bhagwan Sahai was 25 years of age and a permanent Government servant working in P.H.E.D., and on 14/12/86 he died in motor accident and at that time, his salary was Rs.710/- per month.

Counsel for claimants has urged that learned Tribunal as well Single Judge both have committed serious error in determining loss of income to family of deceased and so also loss of consortium to wife and love & affection to children under award impugned in

this appeal, are also on very lower side.

We have heard Counsel for Claimants appellants and with his assistance, examined material on record. It is not in dispute that the age of deceased was 25 years and he was a permanent government servant, and as per second schedule of Motor Vehicles Act, 1988, multiplier should have been of 18 and his future prospects of income has been completely ignored which are to be considered and at least must be double the salary which comes to Rs.1420/- and after deduction of one third towards personal expenses of deceased, economic family dependency comes to Rs.947/- per month and in these circumstances, loss of income will have to be Rs.2,04,552/- (Rs.947 X 12 months X multiplier of 18).

The Tribunal after taking note of evidence on record, held the deceased also liable for contributory negligence to the extent of 25%, which has also been affirmed by learned Single Judge. After having examined material on record, we are in affirmation with findings recorded by Tribunal and learned Single Judge so far as it relates to contributory negligence of the deceased. It is a case where two deceased persons died in motor accident and contributory negligence of deceased persons has been held to the extent of 25%. Being two claim petitions filed, one by family members of Bhagwan Sahai (deceased) and another by Rajendra Kumar (deceased), both died in motor accident on 14/12/86, negligence has to be bifurcated among the two in equal proportion. This has not been considered either by the

Tribunal or learned Single Judge. If 25% contributory negligence has been held qua two deceased persons, then in case of deceased Bhagwan Sahai, whose claimants are present appellants, contributory negligence after equal bifurcation among two deceased, comes to 12.5% in each of case and not 25% from each of deceased persons in two claim petitions. Accordingly, in case of present claimants (appellants) contributory negligence is assessed at 12.5% and only to that extent, total compensation awarded requires to be reduced and not 25% as held by Tribunal. Thus, after deduction to the extent of 12.5% towards contributory negligence in case of Bhagwan Sahai (deceased), Claimants are entitled to compensation towards loss of income to the tune of Rs.1,78,983/- (12.5% of Rs.2,04,552/- assessed towards loss of income of deceased, ibid).

We further find that age of deceased at the time of accident was 25 years. Loss of consortium to wife at Rs.5,000/- and loss of love & affection to children at Rs.2,000/- as assessed by the Tribunal are highly towards on lower side and looking to age of deceased Bhagwan Sahai, we consider that loss of consortium to wife should have been Rs.30,000/-, while loss of love & affection to children should be at least Rs.10,000/-.

In the light of what has been observed above, we hold that claimants (appellants) are entitled to Rs.2,18,983/- (Rs.1,78,983/ + Rs.30,000/ + Rs.10,000). Rest of Award of Tribunal in respect of rate of interest is not modified.

In the result, this special appeal is partly allowed. Amount of compensation is enhanced to Rs.2,18,983/-, which shall be paid by the Insurance Company. However, claimants would be entitled to interest @ 9% per annum on compensation of Rs.1,05733/- enhanced by this Court (Rs.2,18,983/-(-)Rs.1,13,250/- calculated by Tribunal) from 30/12/86 till actual payment. Total compensation with interest shall be deposited by respondents in the Tribunal within two months through A/c payee bank draft.

As regards disbursement, the Tribunal is directed to deposit the amount of compensation enhanced by this Court in Monthly Income Scheme of Post office for a term of three years in joint name of claimants and they will be entitled to receive monthly interest on post office MIS account, supra, as well as full amount of MIS on its maturity.

To the above extent, impugned Award stands modified. No order as to costs.

(Ajay Rastogi), J. (V.K.Bali), J.

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